

ASSEMBLY BILL

No. 863

Introduced by Assembly Member Torres

February 21, 2013

An act to amend the heading of Article 4 (commencing with Section 820) of Chapter 4 of Division 1 of, and to add Section 820.2 to, the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 863, as introduced, Torres. Transit projects: environmental review process.

Existing federal law authorizes the United States Secretary of Transportation to enter into an agreement with a state under which the state assumes the responsibilities of the secretary with respect to federal environmental review and clearance under the National Environmental Policy Act of 1969 (NEPA) with respect to one or more transportation projects, as specified. Existing law, until January 1, 2017, authorizes the Department of Transportation, for transportation projects under its jurisdiction, to assume those responsibilities for federally funded surface transportation projects subject to NEPA. Existing law provides that the State of California consents to the jurisdiction of the federal courts with regard to the compliance, discharge, or enforcement of those responsibilities, and further provides that the department may not assert immunity from suit under the 11th Amendment to the United States Constitution with regard to actions brought relative to those responsibilities under federal law.

This bill would authorize the department to assume similar responsibilities for federal review and clearance under NEPA for a transit project, as defined, that is subject to NEPA. The bill would

provide that the State of California consents to the jurisdiction of the federal courts in that regard, and further provides that the department may not assert immunity from suit under the 11th Amendment to the United States Constitution with regard to actions brought relative to those responsibilities under federal law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 4 (commencing with
2 Section 820) of Chapter 4 of Division 1 of the Streets and
3 Highways Code is amended to read:

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5 Article 4. State and Federal ~~Highway~~ *Work on Transportation*
6 *Projects*
7

8 SEC. 2. Section 820.2 is added to the Streets and Highways
9 Code, to read:

10 820.2. (a) The Department of Transportation may assume
11 those responsibilities for review and clearance of a transit project
12 under the National Environmental Policy Act of 1969 (NEPA), as
13 authorized by subsection (a) of Section 327 of Title 23 of the
14 United States Code, by entering into a memorandum of
15 understanding with the federal government office that approves
16 NEPA documents for the federal funding of transit projects.

17 (b) The State of California consents to the jurisdiction of the
18 federal courts with regard to the compliance, discharge, or
19 enforcement of the responsibilities assumed by the department
20 pursuant to subsection (a) of Section 327 of Title 23 of the United
21 States Code.

22 (c) In any action brought pursuant to subsection (a) of Section
23 327 of Title 23 of the United States Code, no immunity from suit
24 may be asserted by the department pursuant to the Eleventh
25 Amendment to the United States Constitution, and any immunity
26 is hereby waived.

27 (d) Nothing in this section affects the obligation of the
28 department to comply with state and federal law.

29 (e) As used in this section, “transit project” means a railroad,
30 public transportation, or multimodal project pursuant to clause (ii)

1 of subparagraph (B) of paragraph (2) of subsection (a) of Section
2 327 of Title 23 of the United States Code.

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